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10/591,314	09/01/2006	Malcolm Macnab	M138.12-0001	8304

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EXAMINER
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ROLAND, DANIEL F

ART UNIT	PAPER NUMBER
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4123

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12/12/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/591,314	<b>Applicant(s)</b> MACNAB, MALCOLM	
	<b>Examiner</b> DANIEL F. ROLAND	<b>Art Unit</b> 4123	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 September 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/1/2006 and 1/3/2007</u> .                                   | 6) <input type="checkbox"/> Other: ____.                          |

### **DETAILED ACTION**

This is the initial Office Action based on the merits of the 10/591,314 application filed September 1, 2006. Claims 1-40, as originally filed, are currently pending and have been considered below.

#### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “cylindrical shank” and “support members” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will

be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Objections***

3. Claims 11 and 39 are objected to because of the following informalities: in claim 11, line 6, the word "I" should be deleted; and in claim 39, line 1, the term "no-portable" should be -- non-portable--. Appropriate correction is required.

4. Claim 23 recites the limitations "the limb" in line 1, "the diameter of the shank" in line 4, and "the diameter of the second end" in lines 4-5. There is insufficient antecedent basis for these limitations in the claim.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 2, 28 and 39-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Regarding claim 2, the phrases "securing to a floor or a base" (claim 1, lines 3-4) and "comprising a base" (claim 2, line 1) renders the claim indefinite because it is unclear whether or not the floor can be a base. If applicant takes the position that the floor could in fact be a base, then claim 2 would be objected to for failing to further limit the subject matter of the parent claim.

8. Regarding claim 28, the phrase "wherein the second aperture is generally rectangular" renders the claim indefinite because the second aperture has already been claimed as being diametrical (claim 25). Applicant should note that the limbs disclosed by Tudor have a second end that is rectangular and thus the second aperture is rectangular, so claim 28 would be rejected in view of Tudor even if the 112 rejection is overcome.

9. Regarding claim 39, the phrase "non-portable martial arts practice dummy" renders the claim indefinite because the martial arts practice dummy has already been claimed as being portable (claim 1).

10. Claim 40 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 1, 2, 9, 16-17, 23-24, and 32 are rejected under 35 U.S.C. 102(e) as being anticipated by Tudor (US Patent 6,808,477).

Tudor discloses a portable martial arts practice dummy comprising:

(Claim 1) a body (Fig 1, #14); and

support means (Fig 4), detachably mounted to the body, for detachably securing the body to a floor or a base and supporting the body for use, said support means comprising a plurality of members (Fig 4, #'s 28, 32, 44, 52) which are detachably secured to each other, the body and/or the base and wherein the body is hollow for receiving the plurality of detached members for storage; and

(Claim 2) a base (Fig 4, #38); and

(Claim 9) wherein the support means comprises a frame horizontal (Fig 4, #28) wherein the body comprises frame horizontal apertures (Fig 2, #36) for the frame horizontal, and wherein the body is detachably mounted (Col 3, lines 1-6) to the frame horizontal by virtue of the frame horizontal passing through the frame horizontal apertures; and

(Claim 16) comprising a limb (Fig 1, #20); and  
(Claim 17) wherein the limb is detachably mounted to the body (Fig 2, #'s 16, 20, 22);  
and  
(Claim 23) wherein the body comprises a tubular portion (Fig 1, #14); and  
(Claim 24) wherein substantially the entire body is tubular (Fig 1, #14); and  
(Claim 32) wherein the dummy comprises a leg (Fig 1, #22), a mid arm (Fig 1, #20), and  
two upper arms (Fig 1, #'s 16, 18).

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

15. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levine (US Patent 4,482,150) in view of Tudor (US Patent 6,808,477).

Levine discloses a portable (Col 1, lines 22-26) exercise device comprising:  
a body (Fig 1, #16); and  
support means (Fig 1, #10), detachably mounted to the body, for detachably securing the body to a floor or a base (Fig 1, #14) and supporting the body for use, said support means comprising a plurality of members (Fig 1) which are detachably secured to each other, the body and/or the base.

Levine does not explicitly disclose a hollow body for receiving the plurality of detached members for storage. However, Tudor teaches a portable martial arts dummy comprising a hollow body (Fig 1, #14).

Levine and Tudor are analogous art because they are from the same field of endeavor – exercise devices.

At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Levine and Tudor before him or her, to modify the exercise device of Levine to include the hollow body as taught by Tudor. Because both Levine and Tudor teach exercise devices it would have been obvious to one skilled in the art to substitute one element (body of Levine, Fig 1, #16) for the other (body of Tudor, Fig 1, #14) to achieve the same predictable result of a body that can be used for practicing exercises such as martial arts and/or boxing.

Therefore, it would have been obvious to combine Tudor with Levine to obtain the invention as specified in the instant claims.



16. Claims 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levine (US Patent 4,482,150) in view of Tudor (US Patent 6,808,477) as applied to claim 2 above, and further in view of Brigham (US Patent 7,063,648).

Levine/Tudor disclose all of the limitations of claims 1-2 as discussed above and discloses (Claims 6-7) a base support for securing base panels together in a plane wherein the base support is a front (Fig 1, #38) and rear (Fig 1, #39) base support, but fails to explicitly disclose a base that comprises two or more panels and wherein the base is collapsible.

However, Brigham teaches an exercise device with a base comprising:

(Claim 3) two or more panels (Fig 3, #48) and wherein the base is collapsible (Fig 2, #48); and

(Claim 4) wherein the panels are connected by one or more hinges (Fig 4, #62); and

(Claim 5) wherein the one or more hinges comprise web hinges (Fig 4, #'s 64, 66); and

(Claim 8) wherein the base comprises mounting points (Fig 3, #59) for securing a support to the base.

Levine/Tudor and Brigham are analogous art because they are from the same field of endeavor – exercise devices.

At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Levine/Tudor and Brigham before him or her, to modify the exercise device of Levine/Tudor to include the base as taught by Brigham. Because both Levine/Tudor and Brigham teach exercise devices it would have been obvious to one skilled in the art to substitute one element (base of Levine, Fig 1, #14) for the other (base of Brigham, Fig 3, #48) to achieve the same predictable result of an exercise mat that can be used for exercising.

Therefore, it would have been obvious to combine Brigham with Levine/Tudor to obtain the invention as specified in the instant claims.

17. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tudor (US Patent 6,808,477).

Tudor discloses all of the limitations of claims 1, 2, and 9 as discussed above, but fails to explicitly disclose a frame horizontal that comprises a pair of frame horizontal members.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the frame horizontal into a pair of separable members, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

18. Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tudor (US Patent 6,808,477) in view of Cragg (US Patent 6,348,028).

Tudor discloses all of the limitations of claims 1, 2, and 9-10 as discussed above, but fails to explicitly disclose a support means comprising a joiner with first and second ends, wherein the pair of frame horizontal members are detachably connected by the joiner, wherein the joiner has a dimension preventing it from escaping the body through the frame horizontal apertures, and wherein the joiner is dimensioned so that when frame horizontals are connected by the joiner the first and second ends of the joiner are substantially in contact with the body.

However, Cragg teaches an exercise device comprising support means (Fig 4, #12) that include a joiner with first and second ends (Fig 4, #44) that is detachably connected to a pair of frame horizontals (Fig 4, #'s 38, 38' and Col 5, lines 40-49)

Tudor and Cragg are analogous art because they are from the same field of endeavor – exercise devices.

At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Tudor and Cragg before him or her, to modify the martial arts dummy of Tudor to include the joiner as taught by Cragg. Because both Tudor and Cragg teach training apparatuses and because all the claimed elements were known in the prior art it would have been obvious to one skilled in the art to combine the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded the same predictable results – connection means to hold a pair of frames together.

Therefore, it would have been obvious to combine Cragg with Tudor to obtain the invention as specified in the instant claims.

Regarding claims 11 and 12, wherein the joiner has a dimension preventing it from escaping the body through the frame horizontal apertures, and wherein the joiner is dimensioned so that when frame horizontals are connected by the joiner the first and second ends of the joiner are substantially in contact with the body, wherein the change in size is brought upon by a change in degree of the producing structures, would be obvious. The Applicant is encouraged to refer to the USPQ First Series Classification Series §51.261 which outlines case law pertaining to changes in size. Particular attention should be paid to *The Murray Company of Texas, INC. v. Continental Gin Company* (CA 5) 120 USPQ 416, which states that “invention cannot inhere in

mere increased size or capacity since mere enlargement is not invention”; In re Rose (CCPA) 105 USPQ 237 which states that “size of article ordinarily is not matter of invention”; Schaefer, INC. v. Mohawk Cabinet Company, INC. (DC NNY) 118 USPQ 411 which states that “mere change in size, form, or degree is not invention”; and The Ward Machinery Company v. Wm. C. Staley Machinery Corporation (DC Md) 192 USPQ 505 which states that “improvement resulting from change in size, proportion, or degree of element contained in prior art, no matter how desirable or useful, does not constitute patentable invention”. Further regarding claims 11 and 12, changing the size of the exercise device would be readily determined by routine experimentation in an effort to produce the optimum results. Under some circumstances, however, changes such as these may impart patentability if the changes in size claimed produce a new and unexpected result which is different in kind and not merely in degree from the results of the prior art. In re Boesch and Slaney, 205 USPQ 215 (CCPA 1980). Furthermore, in Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

19. Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tudor (US Patent 6,808,477) in view of Nelson et al (US Patent 6,152,863).

Tudor discloses all of the limitations of claim 1 as discussed above, but fails to explicitly disclose support means that comprise a frame and a pair of frame uprights upstanding from a

base, the frame also comprising a pair of rear triangulation supports bracing the frame uprights to the base in a first plane; a pair of lateral triangulation supports bracing the frame uprights to the base in a second plane; and a pair of frame horizontals connecting the body to the frame uprights.

However, Nelson et al teaches a martial arts dummy comprising support means that comprise a frame (Fig 1) and a pair of frame uprights (Fig 1, #132) upstanding from a base (Fig 1, #112 and Col 4, lines 30-33), the frame also comprising a pair of rear triangulation supports bracing the frame uprights to the base in a first plane (Fig 1); and a pair of lateral triangulation supports bracing the frame uprights to the base in a second plane (Fig 1).

Tudor and Nelson et al are analogous art because they are from the same field of endeavor – exercise devices.

At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Tudor and Nelson et al before him or her, to modify the martial arts dummy of Tudor to include the frame and base as taught by Nelson et al. Because both Tudor and Nelson et al teach martial arts dummies and because all the claimed elements were known in the prior art it would have been obvious to one skilled in the art to combine the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded the same predictable results – a martial arts dummy with support means.

Therefore, it would have been obvious to combine Nelson et al with Tudor to obtain the invention as specified in the instant claims.

Applicant should note that in the combination of Tudor and Nelson et al, the frame horizontals of Tudor (Fig 1, #28) would inherently be connecting the body to the frame uprights (Fig 1, #132) of Nelson et al.

20. Claims 18-22 and 25-27 rejected under 35 U.S.C. 103(a) as being unpatentable over Tudor (US Patent 6,808,477) in view of Crook (GB 2,307,418).

Tudor discloses all of the limitations of claims 1, 16, and 23 as discussed above, but fails to explicitly disclose a frustoconical limb comprising a cylindrical shank. Tudor also discloses a (Claim 21) body comprising a recess (Fig 2) for receiving a first and second end of a limb so that the limb is mounted to the body when the second end is received by the recess.

(Claims 18-20) However, Crook teaches a martial arts dummy comprising a frustoconical limb (Fig 2, #13) which comprises a cylindrical shank (Fig 2, #12).

Tudor and Crook are analogous art because they are from the same field of endeavor – exercise devices.

At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Tudor and Crook before him or her, to modify the martial arts dummy of Tudor to include the frustoconical limb with a cylindrical shank as taught by Crook. Because both Tudor and Crook teach martial arts dummies it would have been obvious to one skilled in the art to substitute one element (limbs of Tudor, Fig 1, #'s 16, 18, 20, 22) for the other (limbs of Crook, Fig 2, #'s 12, 13) to achieve the same predictable result of a limb that can be used for practicing martial arts.

Therefore, it would have been obvious to combine Crook with Tudor to obtain the invention as specified in the instant claims.

(Claims 22, 25, and 26) Crook also teaches a recess (Fig 2, #6) dimensioned so that the recess receives a portion of the shank when the limb is mounted to the body. Examiner notes that

the recesses (Fig 2) disclosed by Tudor would thus be dimensioned accordingly to receive the limb and the shank when the limb is mounted to the body.

(Claim 27) Regarding claim 27, wherein the second end of the limb has a diameter smaller than the diameter of the shank a mere change in size of a product produced, wherein the change in size is brought upon by a change in degree of the producing structures, would be obvious. The Applicant is encouraged to refer to the USPQ First Series Classification Series §51.261 which outlines case law pertaining to changes in size. Particular attention should be paid to *The Murray Company of Texas, INC. v. Continental Gin Company* (CA 5) 120 USPQ 416, which states that “invention cannot inhere in mere increased size or capacity since mere enlargement is not invention”; *In re Rose* (CCPA) 105 USPQ 237 which states that “size of article ordinarily is not matter of invention”; *Schaefer, INC. v. Mohawk Cabinet Company, INC.* (DC NNY) 118 USPQ 411 which states that “mere change in size, form, or degree is not invention”; and *The Ward Machinery Company v. Wm. C. Staley Machinery Corporation* (DC Md) 192 USPQ 505 which states that “improvement resulting from change in size, proportion, or degree of element contained in prior art, no matter how desirable or useful, does not constitute patentable invention”. Further regarding claim 27, changing the size of the exercise device would be readily determined by routine experimentation in an effort to produce the optimum results. Under some circumstances, however, changes such as these may impart patentability if the changes in size claimed produce a new and unexpected result which is different in kind and not merely in degree from the results of the prior art. *In re Boesch and Slaney*, 205 USPQ 215 (CCPA 1980). Furthermore, in *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that,

where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

(Claims 29-31) Tudor also discloses a limb comprising a recess/aperture (Fig 2, the non-number dowel holding the limbs in place) for detachably receiving a dowel so that when the dowel is engaged in the recess then the body is captively held between the shank and the dowel to limit motion between the limb and the body.

21. Claims 33-35 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tudor (US Patent 6,808,477) in view of D'Alto (US Patent 5,437,590).

Tudor disclose all of the limitations of claims 1 and 23 as discussed above, but fails to explicitly disclose a martial arts dummy comprising one or more foam rubber/plastic support members located in a tubular portion of the body, wherein at least one of (i) one or more recesses and (ii) one or more apertures are provided in each of the one or more support members, and wherein the recesses and apertures allow items to be stored inside the tubular portion; and wherein the dummy comprises a base support member, a mid support member, and a top support member; and wherein the dummy comprises a leather punch pad. Tudor does disclose a tubular portion comprising at least one or more recesses and one or more apertures (Fig 2).

However, D'Alto teaches an exercise bag comprising base (Fig 1, Section D), mid Fig 1, Section B), and top (Fig 1, Section A) foam rubber/plastic support members (Col 5, lines 7-13) located in a tubular portion of a body with a leather cover (Col 5, lines 5-7).



Tudor and D'Alto are analogous art because they are from the same field of endeavor – exercise devices.

At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Tudor and D'Alto before him or her, to modify the martial arts dummy of Tudor to include the foam rubber/plastic sections as taught by D'Alto. Because both Tudor and D'Alto teach exercise bags/dummies and because all the claimed elements were known in the prior art it would have been obvious to one skilled in the art to combine the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded the same predictable results – a martial arts dummy comprised of tubular sections instead of one solid piece.

Therefore, it would have been obvious to combine D'Alto with Tudor to obtain the invention as specified in the instant claims.

22. Claims 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tudor (US Patent 6,808,477) in view of Chen (US Pre-Grant Publication 2004/0009852).

Tudor discloses all of the limitations of claims 1 and 23 as discussed above, but fails to explicitly disclose an end section a martial arts dummy comprising an end section, wherein the end section is detachably mounted to the tubular portion to close off the tubular portion, and wherein the end section has a releasable latch for securing the end section to the tubular portion.

However, Chen teaches an exercise bag comprising an end section (Fig 2, #12), wherein the end section is detachably mounted to a tubular portion (Fig 1, #10) to close off the tubular

portion, and wherein the end section has a releasable latch (Paragraph 18) for securing the end section to the tubular portion.

Tudor and Chen are analogous art because they are from the same field of endeavor – exercise devices.

At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Tudor and Chen before him or her, to modify the martial arts dummy of Tudor to include the end section and latch as taught by Chen. Because both Tudor and Chen teach exercise bags/dummies and because all the claimed elements were known in the prior art it would have been obvious to one skilled in the art to combine the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded the same predictable results – a hollow dummy with a cover on the end.

Therefore, it would have been obvious to combine Chen with Tudor to obtain the invention as specified in the instant claims.

### ***Conclusion***

23. The prior art made of record is considered pertinent to applicant's disclosure. Please see form PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL F. ROLAND whose telephone number is (571)270-5029. The examiner can normally be reached on Monday - Friday (7:30-5:00) Alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Del Sole can be reached on (571) 272-1130. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Daniel F Roland/  
Examiner, Art Unit 4123

December 10, 2007

/Joseph S. Del Sole/  
Supervisory Patent Examiner, Art Unit 4123